

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BOARHEAD FARM AGREEMENT GROUP,	:	
	:	
Plaintiff,	:	Civil Action No. 02-3830
	:	
v.	:	(Hon. Legrome D. Davis)
	:	
ADVANCED ENVIRONMENTAL	:	
TECHNOLOGY CORPORATION, ET AL.,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this            day of            , 2004, upon consideration of the Joint Motion of Plaintiff Boarhead Farm Agreement Group and Settling Defendants for Order of Dismissal with prejudice and the Response of Defendant Ashland Inc. thereto, it is hereby **ORDERED** that Plaintiff's Motion is **DENIED**.

BY THE COURT:

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LEGROME D. DAVIS, U.S.D.J.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BOARHEAD FARM AGREEMENT GROUP,	:	
	:	
Plaintiff,	:	Civil Action No. 02-3830
	:	
v.	:	(Hon. Legrome D. Davis)
	:	
ADVANCED ENVIRONMENTAL	:	
TECHNOLOGY CORPORATION, ET AL.,	:	
	:	
Defendants.	:	

**(ALTERNATIVE) ORDER**

**AND NOW**, this            day of            , 2004, upon consideration of the Joint Motion of Plaintiff Boarhead Farm Agreement Group and Settling Defendants for Order of Dismissal with prejudice and the Response of Defendant Ashland Inc. thereto, it is hereby **ORDERED** as follows:

1. All claims asserted or that could have been asserted by the Boarhead Farms Agreement Group in the Third Amended Complaint against the Settling Defendants and all potential counterclaims by the Settling Defendants against the Agreement Group arising out of the subject matter of the Third Amended Complaint, any of which arose out of or in the future could arise out of the subject matter of the action, shall be and hereby are DISMISSED, with prejudice.

2. All deemed and asserted cross-claims by the Non-Settling Defendants against the Settling Defendants and by the Settling Defendants against the Non-Settling Defendants for contribution with respect to the Plaintiff's claims in this action only shall be and hereby are dismissed and barred with prejudice.

3. The Court's Memorandum Order filed on June 30, 2004 (Dkt. No. 96) will govern

in determining the extent to which the Non-Settling Defendants' liability, if any, should be offset by settlements between the Plaintiff and the Settling Defendants.

4. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finding no just reason for delay, this Order of Dismissal with prejudice shall be entered as a final judgment of the Court with respect to the Settling Defendants and the Non-settling Defendants.

BY THE COURT:

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LEGROME D. DAVIS, U.S.D.J.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BOARHEAD FARM AGREEMENT GROUP,	:	
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Plaintiff,	:	Civil Action No. 02-3830
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	:	
ADVANCED ENVIRONMENTAL	:	
TECHNOLOGY CORPORATION, ET AL.,	:	
	:	
Defendants.	:	

**ANSWER OF DEFENDANT ASHLAND INC. TO JOINT MOTION OF  
PLAINTIFF BOARHEAD FARM AGREEMENT GROUP  
AND SETTLING DEFENDANTS FOR ORDER OF DISMISSAL WITH PREJUDICE**

Defendant Ashland Inc., designated by Plaintiff as Ashland Chemical Company (hereinafter, "Ashland"), by and through its counsel, hereby responds to Plaintiff's and Settling Defendants' Motion for Order of Dismissal with prejudice of certain Settling Defendants in accordance with the numbered paragraphs thereof as follows:<sup>1</sup>

1. Admitted in part, denied in part. It is admitted that Plaintiff Boarhead Farm Agreement Group (hereinafter, "BFAG"), filed a Complaint on the date alleged. Said Complaint, being in writing, speaks for itself and any characterizations thereof by Plaintiff and the Settling Defendants are denied. By way of further response, Plaintiff filed a Third Amended Complaint on September 19, 2003.

2. Denied. As Ashland has not been provided with copies of any such Settlement Agreements, Ashland is without information or knowledge sufficient to form a belief as to the truth

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<sup>1</sup> Defendants Advanced Environmental Technology Corp., Carpenter Technology Corporation, Flexible Circuits, Merit Metals Products Corp. and NRM Investments Co. join in this Answer.

of the averments set forth in this paragraph, wherefore same are deemed denied and at issue and strict proof thereof is demanded.

3. Admitted.

4. Denied. The averments set forth in this paragraph are conclusions of law to which no response is required. By way of further response, Ashland specifically denies that said proposed Order reflects the Court's holdings in its June 30, 2004 Memorandum Order, the provisions of which, being in writing, speak for themselves and any characterizations thereof by Plaintiff and the Settling Defendants are denied.

**WHEREFORE**, Defendant Ashland Inc. respectfully requests that the Motion of Plaintiff Boarhead Farm Agreement Group and Settling Defendants for Order of Dismissal with prejudice be denied.

*Richard C. Biedrzycki*

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Counsel for Defendant Ashland Inc.,  
designated by Plaintiff as  
Ashland Chemical Company

Date: August 3, 2004

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BOARHEAD FARM AGREEMENT GROUP,	:	
	:	
Plaintiff,	:	Civil Action No. 02-3830
	:	
v.	:	(Hon. Legrome D. Davis)
	:	
ADVANCED ENVIRONMENTAL	:	
TECHNOLOGY CORPORATION, ET AL.,	:	
	:	
Defendants.	:	

**MEMORANDUM OF LAW OF DEFENDANT ASHLAND INC.  
IN OPPOSITION TO JOINT MOTION OF PLAINTIFF AND  
SETTLING DEFENDANTS FOR ORDER OF DISMISSAL WITH PREJUDICE**

Defendant Ashland Inc., designated by Plaintiff as Ashland Chemical Company (hereinafter "Ashland"), by and through its counsel, submits this Memorandum of Law in Opposition to the Motion of Plaintiff Boarhead Farm Agreement Group (hereinafter "BFAG") and Settling Defendants for an Order of dismissal with prejudice of certain claims and cross-claims.<sup>2</sup>

Defendant Ashland submits herein that Plaintiff and the Settling Defendants have misunderstood and/or are misapplying the rulings and holdings of this Court in its Memorandum Order entered on June 30, 2004<sup>3</sup> determining Plaintiff's Motion for Standing Order regarding the dismissal of settling defendants. As announced in the June 30, 2004 Memorandum Order, settling parties in a case such as this may, under certain circumstances, be dismissed from the action

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<sup>2</sup> Defendants Advanced Environmental Technology Corp., Carpenter Technology Corporation, Flexible Circuits, Merit Metals Products Corp. and NRM Investments Co. join in this Memorandum.

<sup>3</sup> A true and correct copy of said Memorandum Order is attached hereto as Exh. "A".

following a settlement agreement, including the dismissal of contribution claims by non-settling parties against the settling defendants. As this Court further held, in the event of a settlement, the settling defendants must likewise be deemed to have extinguished any cross-claims for contribution they might otherwise have had unless the settlement agreement also extinguishes the liability of non-settling defendants to the Plaintiff. The proposed Order submitted by the Plaintiff and the Settling Defendants here would, if entered, violate the June 30, 2004 Memorandum Order by permitting the Settling Defendants to pursue potential cross-claims and/or claims for contribution against the Non-settling Defendants "to the extent that such potential claims relate to matters specifically excluded from the scope of the Release contained in the Settlement Agreements."

Neither Ashland nor any of the other Non-Settling Defendants, to Ashland's knowledge, have been provided with signed copies of the purported Settlement Agreements and Releases entered into between Plaintiff and the Settling Defendants. Accordingly, Ashland is unable to determine not only whether any of the Settlement Agreements or Releases provide for the extinguishment of Plaintiff's claims against Ashland, Ashland is also unable to determine whether those Settlement Agreements and Releases purport to exclude from being extinguished any claims, cross-claims or contribution claims<sup>4</sup>.

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<sup>4</sup> Although on July 30, 2004, BFAG's counsel, at the undersigned's request, produced a copy of an unsigned form Settlement Agreement (Attached hereto as Exh. "B"), that Agreement, even if it represents the terms of the Settlements reached between BFAG and the Settling Defendants, can be construed as an attempt to reserve claims and crossclaims against the Non-Settling Defendants that the June 30, 2004 Memorandum Order otherwise requires be extinguished. The purported Agreement at ¶5 thereof seeks to assign to BFAG, *inter alia*, the Settling Defendants' cross-claims against the Non-Settling Defendants, thereby potentially excepting them from being discharged. Neither the purported Settlement Agreement nor the Plaintiff's proposed Order expressly extinguishes such assigned claims against the Non-Settling Defendants.

In short, on the present state of the record, Ashland is without any ability to determine whether Plaintiff's claims against it have been dismissed as a result of the purported Settlement Agreements and Releases, the only circumstance under which this Court in its Memorandum Order of June 30, 2004 permitted the continuation of cross-claims or contribution claims against the Settling Defendants. Therefore, Plaintiff's and the Settling Defendants Joint Motion must be denied as it seeks an Order which is contrary to, and in violation of, this Court's rulings on the effect of settlements under the Uniform Comparative Fault Act which this Court held shall apply to settlements. In the alternative, Ashland submits that should any dismissals be ordered, in accordance with this Court's June 30, 2004 Memorandum Order such dismissals must include dismissals of cross-claims for contribution by the Settling Defendants against the Non-Settling Defendants and that the dismissal of claims and/or cross-claims against the Settled Defendants be limited to claims and cross-claims arising out of Plaintiff's claims in this case only.

### **CONCLUSION**

For all of the foregoing reasons and those set forth in its Answer to the Joint Motion of Plaintiff and Settling Defendants, Defendant Ashland Inc. respectfully submits that Plaintiff's and

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Also, to the extent that the language in Plaintiff's proposed Order seeking to exclude from dismissal "matters specifically excluded from the scope of the Release contained in the Settlement Agreement" is intended by Plaintiff and the Settling Defendants to relate to and include only those matters set forth in ¶1.3 ("Excluded Matters") of the purported Settlement Agreement, if those "Excluded Matters," as Plaintiffs and the Settling Defendants apparently assert, are not at issue in this civil action, there would appear to be no need to except them from dismissal. Any dismissal Order should only include matters arising out of Plaintiff BFAG's claims. Defendant Ashland's proposed Alternative Proposed Order, at ¶ 2 thereof, clarifies that the contribution claims to be dismissed are those "with respect to the Plaintiff's claims in this action only." A proposed alternative Order is enclosed.



the Settling Defendants' Motion should be denied or, in the alternative, be granted under the terms of the proposed Alternative Order attached hereto.

Respectfully submitted,

*Richard C. Biedrzycki*

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Counsel for Ashland Inc., designated by  
Plaintiff as Ashland Chemical Company

Date: August 3, 2004

**CERTIFICATE OF SERVICE**

I, Richard C. Biedrzycki, Esquire, hereby certify that on this 3rd of August, 2004, I caused a true and correct copy of the foregoing Answer of Defendant Ashland Inc. to Motion of Plaintiff Boarhead Farm Agreement Group for Order of Dismissal with Prejudice, along with a supporting Memorandum of Law and proposed Orders, to be served by first class mail on all counsel of record addressed as follows:

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Richard C. Biedrzycki  
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Date: August 3, 2004